

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

HELEN KIM, d/b/a THE  
TOWNHOUSE MOTEL,

Plaintiff.

V.

THE CITY OF SUNNYSIDE, a  
Municipal Corporation, Its Officers,  
Agents, and Assigns,

Defendant.

NO: 1:23-CV-3012-TOR

**ORDER DENYING MOTION  
TO REMAND**

BEFORE THE COURT is Plaintiff's Motion to Remand (ECF No. 5). This

matter was submitted for consideration without oral argument. The Court has

reviewed the record and files herein and is fully informed. For the reasons

discussed below, Plaintiff's Motion to Remand (ECF No. 5) is **DENIED**.

## BACKGROUND

This matter relates to the revocation of Plaintiff's business license. Plaintiff filed a Complaint in Superior Court in the County of Yakima, Washington on

1 October 11, 2022. ECF No. 5-1 at 3. Defendant filed a Motion to Dismiss, which  
2 was granted with leave to amend. ECF No. 6 at 2. Plaintiff filed an Amended  
3 Complaint on January 27, 2023. *Id.* Defendant filed a Notice of Removal on  
4 February 1, 2023. ECF No. 1. Plaintiff moves to remand the matter to state court  
5 on the grounds that the amount in controversy does not meet the statutory threshold  
6 requirements and Defendant's removal is untimely. ECF No. 5 at 2–3. Defendant  
7 asserts the amount in controversy requirements under diversity jurisdiction do not  
8 apply and it did not become aware of Plaintiff's federal constitutional claims until  
9 Plaintiff filed the Amended Complaint. ECF No. 6 at 3–4.

## 10 DISCUSSION

### 11 A. Jurisdiction

12 “A defendant may remove an action to federal court based on federal  
13 question jurisdiction or diversity jurisdiction.” *Hunter v. Philip Morris USA*, 582  
14 F.3d 1039, 1042 (9th Cir. 2009) (citing 28 U.S.C. § 1441). “The burden of  
15 establishing federal jurisdiction is upon the party seeking removal.” *Emrich v.*  
16 *Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988). Removal is proper if the  
17 case could have originally been filed in federal court. *Chicago v. Int'l Coll. of*  
18 *Surgeons*, 522 U.S. 156, 163 (1997). The court “must look to the complaint as of  
19 the time the removal petition was filed” to determine whether the case could have  
20 been filed in federal court. *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062,

1 1065 (9th Cir. 1979). In cases where federal law creates the cause of action,  
2 “federal courts unquestionably have federal subject-matter jurisdiction.” *Merced*  
3 *Irr. Dist. v. Cnty. of Mariposa*, 941 F. Supp. 2d 1237, 1259 (E.D. Cal. 2013) (citing  
4 *Merrell Dow Pharm., Inc. v. Thompson* (“*Merrell Dow*”), 478 U.S. 804, 809  
5 (1986)); 28 U.S.C. § 1331. District courts may exercise supplemental jurisdiction  
6 over related state law claims. 28 U.S.C. § 1367.

7 Here, the Amended Complaint states claims for federal constitutional and  
8 statutory violations. ECF No. 6-4 at 9–10. Accordingly, this Court has original  
9 jurisdiction over Plaintiff’s federal claims pursuant to 28 U.S.C. § 1331.  
10 Additionally, because Plaintiff alleges state law claims arising from “a common  
11 nucleus of operative facts,” the Court may exercise supplemental jurisdiction over  
12 Plaintiff’s state law claims. *Schafer v. Sea-Land Serv., Inc.*, 11 F. App’x 951, 953  
13 (9th Cir. 2001) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966));  
14 28 U.S.C. § 1367. Defendant has properly established the basis for this Court’s  
15 jurisdiction. Plaintiff’s assertion regarding the minimum amount in controversy  
16 under diversity jurisdiction is irrelevant.

17 **B. Timeliness**

18 “The [federal removal] statute provides two thirty-day windows during  
19 which a case may be removed—during the first thirty days after the defendant  
20 receives the initial pleading or during the first thirty days after the defendant

1 receives a paper from which it may first be ascertained that the case is one which is  
2 or has become removable if the case stated by the initial pleading is not  
3 removable.” *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 692 (9th Cir. 2005)  
4 (internal quotations and citation omitted).

5 Plaintiff argues the original complaint clearly stated violations of due  
6 process and substantive rights. ECF No. 5 at 2. As such, Defendant’s 30-day  
7 clock began to run when it received Plaintiff’s original complaint filed on October  
8 11, 2022. However, a review of Plaintiff’s original complaint does not reveal  
9 “clearly” stated federal claims. In fact, the only mention of “due process” and  
10 “substantive rights” appears in a single sentence, and it is not clear whether  
11 Plaintiff is alleging violations of state or federal rights. ECF No. 6-1 at 5.  
12 Conversely, the Amended Complaint outlines claims for federal constitutional and  
13 statutory violations and identifies the sources of law for each claim. ECF No. 6-4  
14 at 9–10

15 The Court determines Defendant could not have been on notice of Plaintiff’s  
16 federal claims until it received the Amended Complaint. The Amended Complaint  
17 was filed on January 27, 2023, triggering Defendant’s 30-day removal timeline.  
18 Defendant removed the action on February 1, 2023. Therefore, Defendant’s  
19 removal was timely.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Plaintiff's Motion to Remand (ECF No. 5) is **DENIED**.

3 The District Court Executive is directed to enter this Order and furnish  
4 copies to counsel.

5 DATED April 3, 2023.



6 A handwritten signature in blue ink that reads "Thomas O. Rice".  
7 THOMAS O. RICE  
8 United States District Judge

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